

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
) Civil Action No. 1:18-cv-00981
JOHNNIE JOE MOORE, III,)
DLJ MORTGAGE CAPITAL, INC.,)
and CHASE CARPET, INC. a/k/a)
CHASE FLOORING, INC.,)
)
Defendants.)

COMPLAINT

Plaintiff, United States of America, pursuant to 26 U.S.C., Sections 7401 and 7403, at the direction of the Attorney General of the United States, or his delegate, and at the request of the Secretary of the Treasury, or his delegate, files this Complaint for (1) a judgment against Defendant, Johnnie Joe Moore, III (“Moore”) for unpaid federal income tax liabilities (2) a judgment against Moore for the unpaid trust fund portion of unpaid federal employment taxes (Form 941) for two entities, and (6) foreclosure of the federal tax liens against, and sale of, certain real property located in Travis County, Texas, owned by Moore.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action under 26 U.S.C. §§ 7402(a) and 7403 and 28 U.S.C. §§ 1331, 1340 and 1345.
2. Venue is proper in this judicial district under 28 U.S.C. Sections 1391(b) and 1396 because Moore resides, and the property that is the subject of this action is located, in this judicial district.

THE PARTIES

3. Plaintiff is the United States of America.
4. Defendant, Johnnie Joe Moore, III, is a taxpayer owing taxes to the United States. He resides in Austin, Texas, within the jurisdiction of this Court.
5. Defendant, DLJ Mortgage Capital, Inc., is named as a Defendant, under 26 U.S.C. § 7403(b), because it purportedly holds a mortgage lien on the real property upon which foreclosure is being requested herein. It may be served through its registered agent, Corporation Service Company, d/b/a CSC Lawyers Incorporating Service Company at 211 East 7th Street, Suite 620, Austin, Texas 78701.
6. Defendant, Chase Carpet Inc. a/k/a Chase Flooring, Inc., a Texas corporation, is named as a Defendant, under 26 U.S.C. § 7403(b), because it purportedly holds a mechanics lien on the real property upon which foreclosure is being requested herein.

COUNT I (TAX LIABILITY)

Moore's Individual Income Taxes (Form 1040)

7. A delegate of the Secretary of the Treasury assessed against, and gave notice and demand to Moore for unpaid federal income tax, statutory additions, and interest for the years 2007, 2008, 2012, 2013, 2014 and 2015. The table below shows the tax year, the assessment date, and the unpaid assessed balances due as of July 2, 2018.

Tax year	Assessment Date	Original Assessment	Unpaid Assessed Balance Due as of 07/02/2018
2007	09/07/2009	\$10,643.00	\$22,305.74
2008	07/20/2009	\$12,534.00	\$2,233.81
2012	01/06/2014	\$18,328.00	\$3,985.43
2013	04/24/2017	\$15,733.00	\$25,026.01
2014	02/13/2017	\$28,493.00	\$47,156.38
2015	02/13/2017	\$28,562.00	\$38,704.97
TOTAL			\$139,412.34

8. Despite having been given proper notice and demand for payment of the assessments shown in paragraph 7, above, Moore has not fully paid the amounts due. Accordingly, the United States is entitled to a judgment that Moore is liable and indebted to the United States in the amount of \$139,412.34, plus prejudgment interest at the rates set forth in 26 U.S.C. §§ 6601 and 6621 as adopted by 28 U.S.C. § 1961(c) from July 2, 2018, until paid.

9. At the time of each of the above described assessments, a federal tax lien arose, under 26 U. S. C. Section 6321, in the amount of the assessment and attached to all the property or rights to the property then owned, or thereafter acquired, by Moore.

10. The United States recorded a Notices of Federal Tax Lien against Moore in the real property records of Travis County, Texas, for the tax years 2007 and 2008 on June 5, 2013, for the tax year 2012 on March 9, 2015, for the tax year 2013 on June 12, 2017 and for the tax years 2014 and 2015 on April 15, 2017.

Moore's Trust Fund Recovery Penalty

11. During the years 2006 through 2012, Defendant, Moore was a responsible person under 26 U.S.C. § 6672 who willfully failed to collect, truthfully account for, and pay over to the United States the income and FICA taxes withheld from the wages paid to the employees of two companies he owned and operated, Full Belly Restaurants, Limited and M3 Consulting, Inc. The IRS assessed the Trust Fund Recovery Penalty (26 U.S.C. § 6672) against Moore, as a result of his failure to pay federal employment (Form 941) taxes owed by the companies. A delegate of the Secretary of the Treasury made assessments against, and gave notice and demand to Moore for the Trust Fund Recovery Penalty under 26 U.S.C. § 6672 for the unpaid employment taxes as set forth below:

Tax Period	Assessment Date	Original Assessment Amount	Unpaid Balance with Interest as of 07/02/2018
March 31, 2006	01/07/2013	\$2,589.94	\$3,130.41
June 30, 2006	01/07/2013	\$2,589.94	\$3,130.41
September 30, 2006	01/07/2013	\$2,501.36	\$3,023.34
December 31, 2006	03/26/2012	\$36,205.77*	
Add'l asmt	01/07/2013	\$2,927.52	\$48,439.52
March 31, 2007	01/07/2013	\$1,945.49	\$2,351.48
June 30, 2007	01/07/2013	\$1,945.49	\$2,351.48
September 30, 2007	01/07/2013	\$1,764.49	\$2,132.69
December 31, 2007	03/26/2012	\$13,114.97*	
Add'l asmt	01/07/2013	\$1,743.15	\$18,336.09
March 31, 2008	01/07/2013	\$1,880.05	\$2,272.39

June 30, 2008	01/07/2013	\$1,880.05	\$2,272.39
September 30, 2008	01/07/2013	\$2,301.79	\$2,782.12
December 31, 2008	01/07/2013	\$2,366.32	\$2,860.13
March 31, 2009	01/07/2013	\$3,013.95	\$3,642.92
June 30, 2009	01/07/2013	\$3,013.95	\$3,642.92
September 30, 2009	01/07/2013	\$3,013.95	\$3,642.92
December 31, 2009	01/07/2013	\$3,013.95	\$3,642.92
December 31, 2010	01/07/2013	\$5,434.05	\$6,568.05
March 31, 2011	01/07/2013	\$2,787.80	\$3,369.56
June 30, 2011	01/07/2013	\$6,025.61	\$7,283.05
September 30, 2011	01/07/2013	\$7,542.32	\$9,116.28
December 31, 2011	01/07/2013	\$5,433.71	\$6,567.63
March 31, 2012	01/07/2013	\$9,000.00	\$10,878.14
June 30, 2012	05/09/2016	\$12,042.71	\$13,179.21
September 30, 2012	05/09/2016	\$18,828.54	\$20,568.55
December 31, 2012	05/09/2016	\$20,670.83	\$22,581.12
TOTAL			\$207,765.72

* These two assessments are related to Full Belly Restaurants, Limited, all of the other assessments relate to M3 Consulting, Inc.

12. Despite proper notice and demand for payment of the assessments referred to in paragraph 11, Moore has neglected, failed or refused to make full payment of the assessed amounts to the United States, and there remains due and owing on the assessments the sum of \$207,765.72,

plus statutory additions accruing from and after July 2, 2018, including, interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c), less any payments and credits.

13. At the time of each of the above described assessments, a federal tax lien arose, under 26 U. S. C. Section 6321, in the amount of the assessment and attached to all the property or rights to the property then owned, or thereafter acquired, by Moore.

14. The United States recorded Notices of Federal Tax Lien against Moore in the real property records of Travis County, Texas, for the first three quarters of 2006, the first three quarters of 2007, the four quarters of 2008 and 2009, the fourth quarter of 2010, the four quarters of 2011 and the first quarter of 2012 on June 5, 2013, the fourth quarter of 2006 and 2007 on February 18, 2014 and the last three quarters of 2012 on April 3, 2017.

COUNT II (SUBJECT PROPERTY)

15. Moore is the owner of certain real property located at 12804 Hughes Street, Austin, Texas 78732 (“the subject real property”), more particularly described as:

All of that Lot 127 and the West One-half of Lot 128, Hughes Park Lake Subdivision in Travis County, Texas, according to the map or plat thereof recoded in Volume 4, Page 64 of the Plat Records of Travis County, Texas.

16. The federal tax liens against Moore attach to and encumber the subject real property.

17. As the tax assessments remain unpaid, the federal tax liens should be foreclosed against Moore’s interest in the subject real property described in paragraph 15 above. Additionally, the subject real property should be ordered sold free and clear of any rights, titles, liens, claims, or interests of any of the parties to this action with the sale proceeds being paid first to the costs of the sale and then to the parties in the order of their priority of interest in the property.

WHEREFORE, the United States of America requests that this Court:

- a. Enter judgment in favor of the United States and against Defendant, Johnnie Joe Moore, III, for federal income taxes for the years 2007, 2008, 2012, 2013, 2014 and 2015, in the amount of \$139,412.54 as of July 2, 2018, plus prejudgment and post judgment interest at the rates set forth in 26 U.S.C. §§ 660, 6621 and adopted by 28 U.S.C. § 1961 until paid;
- b. Enter judgment in favor of the United States and against Defendant, Johnnie Joe Moore, III, for the trust fund recovery penalty under 26 U.S.C. 6672 with respect to Full Belly Restaurants, Limited and M3 Consulting, Inc.'s federal Form 941 employment taxes, in the amount of \$207,765.72, as of July 2, 2018, plus prejudgment and post judgment interest at the rates set forth in 26 U.S.C. §§ 6601 and 6621 as adopted by 28 U.S.C. § 1961(c) until paid; and
- c. Award the United States such further relief as the Court deems just and proper, including, judgment for an amount equal to its costs incurred in this action.

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